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SIPDIS

FROM USMISSION UNESCO PARIS

SENSITIVE

STATE FOR IO, IO/T, EUR/ERA, L/EUR, L/UNA, EB/TPP/MTA/MST

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TAGS: [SCUL](#) [ETRD](#) [UNESCO](#)

SUBJECT: USUNESCO: OUTCOME OF EXECUTIVE BOARD DECISION ON EUROPEAN COMMISSION PARTICIPATION IN CULTURAL DIVERSITY NEGOTIATIONS

REF: PARIS 02231 (NOTAL)

1. (SBU) Summary: The EU continues to focus on UNESCO as a place to enhance its influence and stature in United Nations organizations. Following the rebuff at last fall's Executive Board of the EU's attempt to gain "full participant" status and the February round of negotiations on a cultural diversity convention, the EU made another run at it during UNESCO's most recent Executive Board meeting which ended April 29. While the Board's resolution gave the EU much less than they wanted, they still succeeded in gaining more than they had before. The resolution says that during the next round of negotiations (May 25-June 4) the EC "while maintaining its observer status" will remain seated at the back of the hall with other observers but will not be subject to the same rules observers must follow on when and how much they can address the meeting. End Summary.

2. (SBU) Negotiations on the Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions (also known as the cultural diversity convention) began in the fall of 2004. A second round of talks was held in February and there will be another later this month.

3. (SBU) During last fall's meeting of UNESCO's biannual Executive Board, European Union members on the board submitted a draft resolution seeking enhanced observer status at future negotiations. Claiming that EU member states had transferred competency in several areas-trade, free movement of people, and intellectual property rights-to the European Community, they asserted a need for a "full" seat at the negotiations table. The EU members had not done their homework and ended up withdrawing their proposed resolution in the face of a maelstrom of negative reactions.

4. (SBU) As a result of the resolution's failure to pass, European Commission representatives were "embedded" in the delegation of the EU presidency (Luxembourg) during the February round of negotiations. Most non-EU member states felt that this approach worked well in logistical terms, that the EC was able to present fully its positions without a problem, and that this arrangement was consistent with the normal rules of procedure.

5. (SBU) Since the beginning of this year, the EU member states on the Board have vigorously and strongly renewed their goals on the participation issue. They prepared another draft Executive Board decision for adoption at the spring Executive Board meeting and began intense lobbying of national delegations at UNESCO and in capitals. We cited one example of their efforts reftel where the Jamaican ambassador received new instructions to support the EU after lobbying in her capital.

6. (SBU) The Executive Board's Special Committee was the first to look at the EU's draft resolution. When the Committee was unable to reach consensus, it referred the matter to a working group headed by the Indian ambassador to UNESCO. The Indian Ambassador, working with Uruguay and Brazil, came up with a revised draft decision text, which, from the U.S. point of view was highly objectionable in several respects. That text, however, was readily embraced by EU states. A key operative paragraph of that text stated that "the European Community, while maintaining its observer status, may actively participate in the same manner as full participants in the work of the Intergovernmental Meeting of Experts, excluding the right to vote." Adoption of such a text would have provided the EC everything it had fought to obtain since last fall.

7. (SBU) With sentiment seeming to coalesce around this version and the likelihood that the EU would prevail in a vote, the US delegation, assisted by US Mission Geneva Legal Adviser Michael Peay, engaged in intensive negotiations with the EU over a 4-day period. The operative language of the final version of the resolution (cleared by IO and EUR) reads: (para 3) (The Executive Board) invites, on an

exceptional basis, the European Community, while maintaining its observer status, to participate actively and as fully as appropriate in the work of the Intergovernmental Meeting of Experts (May 25 - 4 June 2005).

(para 4) Recommends that the General Conference, at its 33rd session, take this decision into account with respect to its consideration of the item related to the Preliminary Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions.

18. (SBU) This version was introduced to the plenary by the Indian ambassador as a consensus text. After adoption, the UK ambassador read a clarifying statement:
(begin quote)The Decision refers to active participation of the European Community as fully as appropriate.

The European Union considers that this active participation shall consist, within negotiation of the convention, of the ability to speak as other participants. Such active participation shall also consist of the ability to reply, to put forward proposals and amendments on issues for which it has competence at the formal meetings. It shall also include the ability to take part in the discussion of procedural issues within the context of the Draft Cultural Diversity Convention and the ability to take part in the committees, working groups, formal or informal meetings set up in the course of the work relating to negotiation of this Convention. The European Community shall have its own nameplate.

The European Community may not chair committees or sub-committees or serve as Rapporteur unless there is full consensus. The European Community shall not have the right vote nor break or block consensus.

Furthermore, European Community participation does not mean an additional voice. Indeed, the European Community decides in internal coordination whether the Presidency of the Council will speak on an issue on behalf of the Community and its member states. During this process, we have been open to providing further explanations concerning competences of the Community as regards the draft Convention whenever it speaks and we will continue to do so. (end quote)

19. (SBU) The Australian Ambassador asked that the UK Ambassador's statement be put verbatim in the records of the meeting and added that Australia would welcome greater clarification of EC competences. The Japanese Ambassador intervened to underscore the point that EC participation does not include the right to vote, which is a "crucial point" for Japan and a "premise of Japan's acceptance" of this outcome. The Russian Ambassador also asked for a clear articulation of EU competencies and linked the competency issue to the unresolved question of who will determine the applicable legal principles that will govern EC participation in the Convention's implementation, once adopted. The UNESCO Legal Adviser provided a non-responsive reply, and the Russian Ambassador again took the floor to express concern about the restricted negotiation of this decision text, noting that this is a "new and unique development." The Chair promised to reproduce the texts of statements made and also promised to forward the EU statement to the chairman of the Inter-Governmental Working Group of Experts (the South African chairman) for reference during the next round of negotiations.

110. (SBU) Comment. Most delegations at UNESCO told us they were really pleased with the outcome. They dreaded a vote and many told us they hated being caught between the US and the EU. We repeatedly made the point that this was not about the US vs. the EU, that this was about broader principles of UNESCO and UN governance. We were disappointed that so few states were willing to confront the EU's egregious over reaching. Most of the responses to IO's demarche cable on this subject showed support in capitals for the US position, but that did not translate into support on the ground. We also were disappointed with the unwillingness of countries like Australia and Russia to address the issue until after the US delegation had finished with all the heavy lifting.

111. (SBU) Comment continued. While we avoided a vote that many believe would have been a clear win for the EU, we are not entirely satisfied with the outcome. Though their participation remains heavily circumscribed, the EU gained more than they had going into the meeting, and no matter how many times they deny this will be a precedent, it will be a precedent.

112. (SBU) Comment continued. Still it should be remembered that the EC's exceptional and unique (vis--vis other observers) ability to speak and present proposals, in the CD negotiations context, while seated with other observers, and its ability to be recognized to speak, like States, in the

chronological order of requests for the floor, is substantially similar to an ability that the EC enjoyed during the initial round of WHO negotiations on the revised International Health Regulations in Geneva in the fall 2004."

13. (SBU) Comment continued. An interesting source of quiet support during this period has come from EU delegations that indicated they were so tired of EC bullying and over-reaching on this issue that they hoped the resolution would be voted down. The message came over as save us from ourselves. We were told that many EU members also did not want a vote and resisted a strong French push for a vote.

14. (SBU) Comment continued. This will not be the last time the EU will come knocking on the door. We see this as one more in a series of attempts by the EU to gain the same rights as member states in UN organizations. UNESCO is a great place to start because so many delegations operate without instructions from their capital, leave decision making to their National Commission representatives who often do not reflect their countries' official foreign policy line or (as in the case of Morocco) leave decision making to the Permanent Delegate in Paris. The language in the resolution about referring this matter to the General Conference in October will likely lead to a reprise of this debate when the issue of who can sign the cultural diversity convention will probably be raised. End comment.

OLIVER